Applicant Details

First Name	**Robert**
Middle Initial	**M**
Last Name	**Porter**
Citizenship Status	**U. S. Citizen**
Email Address	**porterrm00@gmail.com**
Address	**Address** Street **104 Shadowood Drive, Apt. W** City **Chapel Hill** State/Territory **North Carolina** Zip **27514** Country **United States**
Contact Phone Number	**(704) 604-3908**

Applicant Education

BA/BS From	**Appalachian State University**
Date of BA/BS	**May 2021**
JD/LLB From	**University of North Carolina School of Law** **https://law.unc.edu/**
Date of JD/LLB	**May 5, 2024**
Class Rank	**25%**
Law Review/Journal	**Yes**
Journal(s)	**First Amendment Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Warf, Sara
swarf@email.unc.edu
Marshall, William
wpm@email.unc.edu
(919) 843-7747
Thomas, Kathleen
kathleent@email.unc.edu
919.843.7630

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ROBERT M. PORTER
901 E. Franklin Street | Chapel Hill, NC 27514
(704) 604-3908 | porterrm00@gmail.com

July 31st, 2023

The Honorable Paul V. Niemeyer
United States Court of Appeals for the Fourth Circuit
Edward A. Garmatz Federal Building and United States Courthouse
101 West Lombard Street, Room 910
Baltimore, MD 21201-2605

Dear Judge Niemeyer:

I am writing to apply for a clerkship in your chambers for the 2025-2026 term. I am a third-year student at the University of North Carolina School of Law, where I am Editor-in-Chief of the *First Amendment Law Review* and have served as President of the Christian Legal Society. Following my graduation in May 2024, I will be serving as a law clerk to the Honorable Richard E. Myers II at the United States District Court for the Eastern District of North Carolina.

I deeply respect your dedication to the role of the judiciary, maintaining that its function is to apply the law, as written, without respect to policy preferences or sympathies. In seeking employment in your chambers, I hope to refine my understanding of these principles as they help ensure fairness in our legal processes and consistency in the application of law.

Attached are my resume, law school transcript, undergraduate transcript, and writing sample. Also attached are letters of recommendation on my behalf from the following individuals:

William P. Marshall
UNC Law
Chapel Hill, NC 27514
wpm@email.unc.edu
(919) 843-7747

Kathleen D. Thomas
UNC Law
Chapel Hill, NC 27514
kathleet@email.unc.edu
(919) 843-7630

Sara B. Warf
UNC Law
Chapel Hill, NC 27514
swarf@email.unc.edu
(919) 962-5384

Please let me know if I can provide any other information that would be helpful. Thank you for your time and consideration.

Sincerely,

Robert Porter

Attachments

ROBERT M. PORTER

porterrm00@gmail.com | (704) 604-3908
901 E. Franklin Street | Chapel Hill, NC 27514

EDUCATION

University of North Carolina School of Law, Chapel Hill, NC — May 2024
J.D. Candidate, GPA: 3.60; Class rank: top 25%
First Amendment Law Review, Editor-in-Chief
Christian Legal Society, President
Federalist Society
Gressman & Pollitt Oral Advocacy Award
Blackstone Legal Fellowship

Appalachian State University, Boone, NC — May 2021
B.S., Political Science, GPA: 3.93; *summa cum laude*
Minor in Chemistry, Certificate in Forensic Science
Outstanding Senior Award in the Department of Government and Justice Studies
Worked 10 hours per week for six semesters

PROFESSIONAL EXPERIENCE

The Honorable Richard E. Myers II, U.S. District Court, EDNC, Wilmington, NC — 2024-2025
Law Clerk
Will serve as a law clerk for the 2024-2025 term.

WilmerHale, Washington, D.C. — May–July 2023
Summer Associate
Assisted with litigation-related matters.

The Honorable Paul Newby, North Carolina Supreme Court, Raleigh, NC — July–August 2022
Intern
Drafted internal memos regarding upcoming docket cases and gave recommendations on the merits. Conducted research regarding cases emphasized in legal briefs and opinions written by the North Carolina Court of Appeals.

Watauga County District Attorney's Office, Boone, NC — August–December 2020
Intern
Facilitated the dismissal and reduction of misdemeanor traffic offenses. Created and updated DWI case files for assistant district attorneys to use in court. Maintained communication with defense counsel, defendants, and victims.

Walmart, Fort Mill, SC — August 2020–August 2021
Stocker
Ensured the shelves were stocked with available freight.

Appalachian State University, Boone, NC — January 2018–May 2021
Administrative Assistant
Compiled research regarding ELS doctoral programs in North Carolina universities.

Carowinds, Charlotte, NC — May 2015 – August 2019
Supervisor
Managed two live shows and wrote daily reports on operating activities, technical issues, and cast performance.

INTERESTS

Hiking in the Appalachia, federal elections, reading

ROBERT PORTER
University of North Carolina School of Law

UNOFFICIAL TRANSCRIPT

GPA: 3.603

Class Rank: Top 25% of Class

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Contracts	Prof. Kathleen Thomas	A-	4
Torts	Prof. Richard Saver	A-	4
Civil Procedure	Prof. John Conley	B+	4
Research, Reasoning, and Writing I	Prof. Sara Warf	A	3

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Criminal Law	Prof. Eisha Jain	A-	4
Property	Prof. Leigh Osofsky	A-	4
Constitutional Law	Prof. Bill Marshall	A-	4
Research, Reasoning, and Writing II	Prof. Emily Seawell	A-	3

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Administrative Law	Prof. Donald Hornstein	B	3
Business Associations	Prof. Thomas Hazen	A	4
First Amendment	Prof. Bill Marshall	A-	3
Appellate Advocacy	Prof. Eric Brignac	A-	3
Professional Responsibility	Prof. Janine Zanin	B+	2

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Evidence	Prof. Andrew Hessick	B+	4
Income Taxation	Prof. Kathleen Thomas	B+	4
Complex Civil Litigation	Prof. Mark Weidemaier	A-	3
Nature of the Judicial Process	Judge Mark Davis	A-	2

Fall 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Externship	Judge Julee Flood		6
Federal Jurisdiction	Prof. Gene Nichol		3
Securities Regulation	Prof. Thomas Hazen		3
Judicial Opinion Writing	Prof. Michael Gerhardt		3

Spring 2024

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS
Criminal Procedure: Investigation	Prof. Eisha Jain		3
Trial Advocacy	Prof. Felice Corpening		3
Law Practice Technologies	Prof. Stacey Rowland		3
Applied Legal Concepts	Prof. O.J. Salinas		2

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of NORTH CAROLINA
at CHAPEL HILL

VAN HECKE-WETTACH HALL
CAMPUS BOX 3380
CHAPEL HILL, NC 27599-3380

919.962.5106
www.law.unc.edu

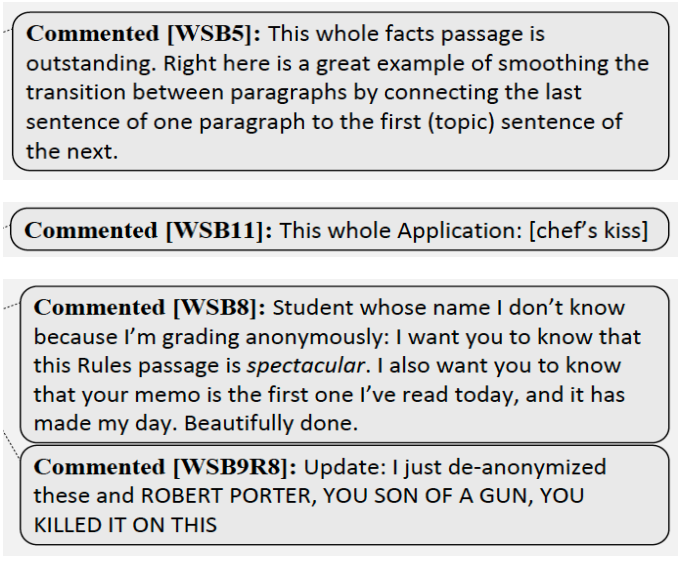
Dear Judge:

I am pleased to offer my strongest support of Robert (Rob) Porter's application for a clerkship position in your chambers.

Rob was in my Research, Reasoning, Writing, and Advocacy class in the fall of his 1L year, where he earned a final course grade of A (4.0), tying for the highest grade in his (extremely talented) class. It is a three-credit course that requires students to submit multiple drafts of written assignments in a variety of genres (predictive internal memos, client letters, etc.), work extensively in small groups, and meet with me individually five times over the semester to review drafts. As a result, I have a good sense of Rob's research, writing, and oral communication skills, and I can say with confidence that they are excellent.

In my class, students receive guidance on their first several writing assignments but then must write the final assignment—a trial brief on an unfamiliar legal issue—independently, with only one twenty-minute conference with me. With almost no guidance, therefore, Rob taught himself a completely unfamiliar, complex area of law (constructive eviction) and mastered a new factual record that included depositions and other types of documents he had never before used. Even with these limitations, Rob's final brief was excellent, easily among the best in his class.

I noted this excellence in my comments on that final brief. While I fancy myself a reasonably professional person, I sometimes get a tad giddy during grading when I hit a particularly successful piece of writing. Below are screenshots of four comments I made on Rob's memo; please enjoy the rapidly decreasing professional tone:



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As you might note from the pure joy in that final comment, I was incredibly proud of Rob's success on this brief. I was, however, wholly unsurprised: Rob's work was fantastic all semester, matched only by his work ethic. He approached me half a dozen times after class and during office hours with thoughtful questions on writing, research, and—to my delight—clerking. The thing that made this even more remarkable was that these questions began *in early September*. When most 1Ls are still finding their feet, Rob was already looking ahead and asking sophisticated questions about career paths.

I included this in my final note to Rob: *I was so impressed by your drive and sheer talent. I'm hoping you'll continue to be interested in clerking; you would be absolutely superb at it.* I myself clerked at the North Carolina Court of Appeals for a total of almost five years, and I now teach a Judicial Clerkship Writing seminar; in my opinion, Rob ticks all the boxes of the successful law clerk. In terms of practical skills, he is a sharp researcher, insightful writer, and diligent editor. In terms of taking feedback, he is eager to learn, implements cleanly, and incorporates feedback in future projects. And, in terms of one-on-one work, he is deeply prepared, mindful of your time, and a pleasure to chat with.

In sum, Rob would be an immediate asset to your chambers, and I could not recommend him more highly. Please let me know if I can offer any more information on him as a candidate.

Sincerely yours,

Sara B. Warf
Clinical Associate Professor of Law

July 31, 2023

The Honorable Paul Niemeyer
Edward A. Garmatz Federal Building and
United States Courthouse
101 West Lombard Street, Room 910
Baltimore, MD 21201-2605

Dear Judge Niemeyer:

I am writing this in support of the application of Rob Porter for a judicial clerkship. As the following comments attest, I strongly support his candidacy and believe he will be an excellent judicial clerk.

Rob was a student in the spring of 2022 in my Constitutional Law course at the University of North Carolina School of Law. In this capacity, he greatly impressed me both as a student of the law and as an exceptional person. To begin with, he has a remarkable legal mind. He truly thinks like a lawyer. He is analytic, precise, and quick to grasp the precedential implications of legal arguments (a skill that I wish was shared by more of his contemporaries). Add to this, his diligence and work ethic and you have an outstanding legal talent in the making.

Equally impressive is his ability to effectively advance his positions. Constitutional Law, of course, has many divisive issues and Rob's views were not always shared by a majority of his colleagues. But Rob always advanced his arguments dispassionately and respectfully and was able to engage with those with whom he disagreed rather than to summarily dismiss opposing ideas or have his ideas summarily dismissed by others. For these reasons, he was both an incredibly effective advocate and, for my purposes, an invaluable classroom asset because his approach invited and allowed controversial subjects to be thoroughly aired.

Finally, I should add that I have no doubt that Rob would work well in the intimate atmosphere of a judicial chambers. He takes direction well, knows when to ask questions, and works well with others.

I hope this information is useful. Please feel free to contact me if you have any further questions.

Very truly yours,

William P. Marshall
Kenan Professor of Law
University of North Carolina
160 Ridge Rd.
Chapel Hill, NC 27514
919 672-7471
wpm@email.unc.edu

August 01, 2023

The Honorable Paul Niemeyer
Edward A. Garmatz Federal Building and
United States Courthouse
101 West Lombard Street, Room 910
Baltimore, MD 21201-2605

Dear Judge Niemeyer:

I write this letter in enthusiastic support of Robert Porter for a clerkship in your chambers. Robert ("Rob") is a rising third year student at UNC School of Law. As his application no doubt reveals, he is one of the best and brightest law students at UNC.

I got to know Rob well as a student in my Contracts class in the fall semester of 2021. From the early weeks of the semester, he established himself as someone who works hard and was always on top of the material. Through our class discussions, he demonstrated that he can think on his feet, analyze complex issues quickly, and engage in thoughtful dialogue. Rob performed well on the final exam, earning a top grade in the class. I enjoyed teaching him again in my Income Tax class this past spring, where he was again a regular and insightful contributor to our class discussions. In short, Rob has been an absolute pleasure to have in my classes.

I have also gotten to know Rob on a personal level during the past two years. I find him to be incredibly likable—he is earnest and thoughtful and a genuinely nice person. Rob also stands out to me as a student who is particularly courteous, mature, and comfortable taking on new challenges.

I would not hesitate to hire Rob if I were still practicing law. He is smart and focused, and I would trust him completely to thoroughly examine issues. He appears to truly enjoy legal research and writing and is flexible geographically.

Rob would make an ideal clerk and I strongly recommend him. If I can provide you with any additional information, please do not hesitate to contact me at 646-483-6480.

Sincerely,

Kathleen DeLaney Thomas

George R. Ward Term Professor of Law
UNC School of Law
5089 Van Hecke-Wettach Hall, CB #3880
Chapel Hill, NC 27599-3880

Writing Sample – Robert Porter

Context: The writing sample below is a portion of a brief written during my second-year Appellate Advocacy course. The brief is written for the appellant, appealing the denial of a motion to suppress evidence.

Brief Summary of the Facts: Defendant Jimmy Lane and his companion were followed into a gas station by police while driving through a local business district late at night. Defendants violated no traffic laws. When Lane attempted to enter the convenience store, Hansen, a police officer, asked to speak with him and eventually requested his driver's license. When two other police officers arrived and partially blocked Lane's car, Hansen instructed them to watch Lane while she went to her vehicle to run the license. Within the span of several minutes, Hansen discovered that the license was expired, and one of the other officers saw the handle of a machete in Lane's car. Lane was taken into custody for driving with a revoked license, and after police searched the car and discovered stolen mail, he was further charged with mail theft. Lane appealed his eventual conviction.

Standard of Review

This Court reviews questions of law *de novo*. *United States v. Black*, 707 F.3d 531, 537 (4th Cir. 2013). Determinations about whether a defendant was seized, whether law enforcement officials had reasonable suspicion, and whether a search was justified pursuant to the "automobile exception" are questions of law and are reviewed *de novo*. *United States v. Jones*, 678 F.3d 293, 299 (4th Cir. 2012); *United States v. McCoy*, 513 F.3d 405, 410 (4th Cir. 2008); *see United States v. Thomas*, 819 F. App'x. 171, 172 (4th Cir. 2020).

Argument

The Fourth Amendment ensures "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. If law enforcement discovers evidence pursuant to a Fourth Amendment seizure, they must demonstrate at least reasonable suspicion as justification. *United States v. Stover*, 808 F.3d 991, 996 (4th Cir. 2015). Absent such a showing, any evidence obtained through a Fourth Amendment violation will be excluded from use in a criminal proceeding against the defendant. *Segura v. United States*, 468 U.S. 796, 804 (1984).

Here, Mr. Lane was clearly seized, and as such, the United States is under the burden to show at least a reasonable suspicion that Mr. Lane was engaged in criminal wrongdoing. They are unable to do so. Therefore, any evidence obtained after the illegal seizure should have been excluded from use in a criminal proceeding against Mr. Lane.

I. Mr. Lane was "seized" for purposes of the Fourth Amendment by Corporal Hansen, Officer Boyd, and Officer Warren.

Under the Fourth Amendment, a defendant is seized when a law enforcement officer "accosts" them and "restrains [their] ability to walk away." *Terry v. Ohio*, 392 U.S. 1, 16 (1968). Even absent a showing of physical force, a display of authority can constitute a seizure if a defendant submits to it. *Brendlin v. California*, 551 U.S. 249, 254 (2007). This determination is situation-dependent, and it

considers what a defendant was doing prior to the police encounter. *See id.* at 262. An individual fleeing from police is seized when they are caught and physically overpowered; a person sitting in a chair is seized when they, as a result of a display of authority, choose not to get up and walk away. *Id.* It is clear, though, that even passive acquiescence to authority can show submission. *Id.*

Ultimately, individual submission to authority is determined by applying a reasonable person standard. *United States v. Jones*, 678 F.3d 293, 299 (4th Cir. 2012). A court will ask whether, in "view of all circumstances surrounding the incident, a reasonable person would have believed that [they] [were] not free to leave." *United States v. Mendenhall,* 446 U.S. 544, 554 (1980).

This is an objective question, and this Court has provided a non-exhaustive list of factors to consider when answering it. *Jones*, 678 F.3d at 299. These include the number of police officers present, whether they were uniformed and visibly armed, whether they treated the defendant as if they suspected them of illegal activity, and whether they attempted to block the defendant from departing. *Id.* at 299-300. As to the last factor, when an officer blocks a defendant's car from leaving, even when they might be able to walk away, this is viewed as a greater demonstration of authority than if they just walked up to speak with them. *Id.* at 302.

Courts have placed a particular emphasis on whether an officer requested a form of identification from the defendant and whether they promptly returned it. *United States v. Black*, 707 F.3d 531, 538 (4th Cir. 2013). And while not dispositive, the retention of identification by a police officer is "highly material under the totality of the circumstances analysis." *United States v. Weaver*, 282 F.3d 302, 311 (4th Cir. 2002). In *Black*, while it was relevant that there were multiple uniformed police officers present, some of whom were watching the perimeter and performing pat down searches, the court drew particular attention to the fact that a police officer pinned Black's identification to his own uniform. *Black*, 707 F.3d at 538. In fact, this Court declared that Black was seized *the moment* his identification was retained while his companions were subject to continued police activity. *Id.*

Here, Mr. Lane was seized by the time Corporal Hansen instructed Officer Boyd to watch him while she walked away with the driver's license. While physical force was not used prior to the eventual detention, Hansen made a display of authority beginning when she called out to Mr. Lane, asking that he speak with her instead of continuing with his initial plan of walking into the convenience store. This initial acquiesce eventually showed itself to be actual submission as the presence of three uniformed police officers, the instruction for Mr. Lane to be watched, the blocking of his car, and the retention of his identification would have made a reasonable person in his position feel as if they were not free to leave. Like the Supreme Court's analogy to a man sitting in a chair, Mr. Lane, as a result of this showing of authority, chose not to get up and continue on his way.

As an initial matter, the mere presence of three uniformed and visibly armed police officers weighs in favor of finding a seizure. This weight is compounded by the fact that Officers Boyd and Warren parked their police car directly behind and perpendicular to that of Mr. Lane. While he technically possessed the ability to *walk* away, given that blocking a defendant's car is viewed as a heightened demonstration of authority, a reasonable person in Mr. Lane's position would not feel free to leave the officers' presence. The Respondents stressed at the District Court that Mr. Lane's vehicle was only partially blocked, and, through some clever maneuvers, he might have been able to back his car out and leave. However, when one considers that he was surrounded by the very police officers who made a point to block his car, one realizes that this was no choice at all.

Corporal Hansen's treatment of Mr. Lane further suggests a Fourth Amendment seizure because she interacted with him in the same way she would interact with a criminal suspect. It has been stressed that the interaction between Mr. Lane and Corporal Hansen began voluntarily and that law enforcement officers are not barred from interacting with members of the public. This is, of course, true. However, it is important to look beyond the birth of an interaction and examine what happened afterward. Corporal Hansen did not simply ask Mr. Lane for directions or insight into an ongoing, unrelated investigation.

That may have been fine. What she did, after following Mr. Lane for two miles into a gas station, was pepper him with questions about where he was from, what he was doing, whether he had identification, and whether that identification was valid. As it stands, these questions would certainly have caused a reasonable person to believe they were suspected of some wrongdoing, but Corporal Hansen's instruction to Officer Boyd to watch Mr. Lane takes this one step further. By stationing one of her police officers directly in front of Mr. Lane, who was sitting in the driver seat of his own car, she conveyed that he was not in a position to leave. To do so would have required that he physically shoulder his way past a police officer – something that can hardly be called a plausible option.

Finally, the retention of Mr. Lane's provisional license by Corporal Hansen is highly material to the totality of the circumstances analysis. Like in *Black*, where a police officer pinned the defendant's identification to his own uniform, Corporal Hansen took Mr. Lane's license and walked back to her own police vehicle *with* the license. The court in *Black* declared there was a seizure the moment the license was retained. Here, Corporal Hansen didn't just retain the license in front of Mr. Lane, she walked away with it, dispelling any notion of its prompt return. And while retention of identification is not dispositive, a reasonable person would not feel free to walk away when a police officer was in active possession of their identification – the very card they need to legally drive. Given the aforementioned factors, when considering the totality of the circumstances, a reasonable person in Mr. Lane's position would not have felt as if they were free to leave. This constitutes a Fourth Amendment seizure.

II. Corporal Hansen lacked reasonable suspicion of criminal activity and, therefore, unlawfully detained Mr. Lane for investigative purposes.

There are some circumstances in which a person may be detained without probable cause, but any such "curtailment of personal liberty" must be supported by at least a reasonable suspicion of criminal wrongdoing. *Reid v. Georgia*, 448 U.S. 438, 440 (1980). This standard requires that an officer be able to point towards specific and articulable facts which, "when taken together with rational inferences from

those facts, reasonably warrant [an] intrusion" *Terry*, 392 U.S. at 21. Reasonableness is an objective quality, and, therefore, the totality of the present circumstances must have created a "particularized and objective basis" for suspecting wrongdoing. *United States v. Cortez*, 449 U.S. 411, 417-18 (1981).

This Court has expressed deep concern over the growing inclination for the government to use "whatever facts are present, no matter how innocent, as indica of suspicious activity." *United States v. Foster*, 634 F.3d 243, 248 (4th Cir. 2011). Government must, then, be able to point towards more than an "unparticularized suspicion or hunch," *Terry*, 392 U.S. at 29, so as not to contribute to the spinning of "largely mundane acts into a web of deception." *Foster*, 634 F.3d at 248.

Relatedly, law enforcement cannot rely on post ad hoc rationalizations to justify the reasonableness of a search. *United States v. Martinez-Fuerte*, 428 U.S. 543, 565 (1976). As reasonableness is an objective test, only the facts known to an officer at the time of the seizure can be used to determine the presence or absence of reasonable suspicion. *United States v. DiGiovanni*, 650 F.3d 498, 511 (4th Cir. 2011).

In conducting this analysis, relevant factors include the context for the stop, the local crime rate, suspicious movements, and evasive behavior by the defendant. *United States v. George*, 732 F.3d 296, 299 (4th Cir. 2013). And while innocent factors taken together can establish reasonable suspicion, *United States v. Branch*, 537 F.3d 328, 339 (4th Cir. 2008), there must still be a *particularized* reason that a *particular* person was stopped. *United States v. Massenburg*, 654 F.3d 480, 486 (4th Cir. 2011).

This interplay is explored in *Massenburg*, where this Court held there was no particularized reason for police officers to seize the defendant. *Id.* at 487. There, a vague tip about gunshots led police to the defendant. *Id.* The District Court held there was reasonable suspicion primarily on the basis of their physical proximity to the reported gunshot, the high-crime nature of the neighborhood, and a physical display of nervousness by the defendant. *Id.* at 484-85. This Court reversed, holding that a vague tip lacking any identifying features taken in conjunction with a defendant's physical proximity to a crime could not reasonably create a particularized suspicion. *Id.* at 487. The *George* case creates a helpful

contrast. *George*, 732 F.3d at 299. There, there *was* a particularized suspicion, but its existence was based off the defendant engaging in an aggressive car chase, providing wholly implausible reasons as to why, movements that indicated the possession of a weapon, and excessive nervousness. *Id.* at 301.

Here, Corporal Hansen lacked reasonable suspicion that Mr. Lane was engaged in criminal activity. Even considering each individual factor as part of a collective, there existed no particularized suspicion of Mr. Lane that would not have also existed with any individual traveling along that road late at night. This evidentiary deficit proves fatal, especially when comparing this case to *George* and *Massenburg*. The bulk of the Respondent's argument hinges on environmental, non-particularized factors, and any attempt to tie in Mr. Lane can be explained away or is excluded under the prohibition against post ad hoc rationalizations.

As a preliminary matter, both the prevalence of mail theft in the area and the late-night hour that Mr. Lane was driving in are relevant, but not dispositive to a totality of the circumstances analysis. On their own, these factors do absolutely nothing to narrow down suspicion to Mr. Lane specifically, as they would also apply to any person driving through Pinnacle Park after midnight. As this is not sufficient on its own to create reasonable suspicion, a fact evidenced by this Court's holding in *Massenburg*, it is necessary to look to other factors for more context.

In turning to Mr. Lane's personal behavior, there is nothing, even when making rational inferences from the raw facts, that points towards criminal wrongdoing. Starting from when he passed Corporal Hansen on the road, Mr. Lane never made a rolling stop or exceeded a posted speed limit. He did not stop at any of the readily available mailboxes on the road, a factor that would have been particularly pertinent given the area's historical difficulties. Corporal Hansen seemed to stress that after making a complete stop at a stop sign, Mr. Lane accelerated "as if he were trying to get away," but this is a conclusion not reasonably drawn from the facts. First, it is a necessary requirement that one accelerate after a stop sign to continue moving. Second, after that turn, the speed limit increased from 25 miles per hour to 35. And

while one could still attempt to escape police while adhering to the speed limit, such a person would not reasonably pull off into a gas station after only another mile. These are innocent facts, and while innocent facts can be taken together to establish reasonable suspicion, this seems more akin to this Court's concern about taking facts, no matter how innocent, and weaving them into a "web of deception." Under such a faulty construction, an elderly traveler who adhered to the speed limit and drove through Pinnacle Park past midnight could be subject to a seizure.

The case at hand is analogous to *Massenburg*, where physical proximity to an alleged crime was found not to create a particularized suspicion. Like the defendant in *Massenburg*, Mr. Lane was approached by police conducting surveillance in a high-crime area. Like the vague tip in *Massenburg*, Corporal Hansen was supposedly operating off either a bulletin board or an email description of suspected mail thieves. And while this information would be likely be excluded under the prohibition against post ad hoc rationales (Corporal Hansen recalled no specific details of either posting that night), it would still weigh against reasonable suspicion if considered. In contrast with the bulletin board posting, Mr. Lane was not with an African American female in a Beige Acura. And the email gave no descriptions of anyone. At most, Corporal Hansen could have noticed that both Mr. Lane and one of the described suspects were African American men, but given the complete lack of anything more specific, this hardly narrows down suspicion to Mr. Lane specifically.

On the other hand, this case draws an excellent contrast to *George*. Unlike the defendant in *George*, who engaged in an aggressive police chase, Mr. Lane adhered to the speed limit. Unlike the defendant in *George*, Mr. Lane exhibited no reported signs of nervousness. The only similarity one could plausibly draw would be between Mr. George's wholly implausible story about why he was chasing the other car and Mr. Lane's assertion that he was in town to visit some girls. This comparison does not hold up. While Mr. George shifted quickly from denying the chase's existence to claiming he was following his wife, Mr. Lane stuck to the same plausible story. Corporal Hansen has cast doubt on whether he was visiting any

girls at all, noting there were not any open clubs, bars, or restaurants nearby, but Mr. Lane could very well have been visiting some friends at their own home. At the very least, the story retains plausibility, something Mr. George's story was not able to do.

Ultimately, what the Respondents are left with is that Mr. Lane drove the speed limit late at night in an area with a known crime problem. Corporal Hansen herself asserted nothing more when telling her colleagues why she wanted to arrest Mr. Lane. She listed only (1) the physical distance between Apex and Fayetteville, (2) the bulletin board posting (which proved to be non-specific and not on point), and (3) a feeling that she just "knew." These factors alone have never been sufficient to establish reasonable suspicion. At most they create a hunch, but a reasonable person in Corporal Hansen's position would not look at them and conclude that there was a significant probability of criminal wrongdoing.

III. Corporal Hansen did not have probable cause to search Mr. Lane's vehicle pursuant to the "automobile exception," as the evidence used by police was obtained in violation of the Fourth Amendment and should be excluded from use in a criminal proceeding.

Ordinarily, under the plain view doctrine, police may seize an object without a warrant if (1) they are lawfully in the position from which they viewed the object and (2) the "incriminating character" of the object is "immediately apparent." *Minnesota v. Dickerson,* 508 U.S. 366, 375 (1993). If, however, police lack probable cause to believe that the object in plain view is contraband without further investigation, they have failed the second element. In the context of a concealed weapons charge, this would require police officers to plainly view an object which, by definition, is concealed in a way that is not plainly discernible by ordinary observation. N.C. Gen. Stat. § 14-269; *see* J.A. at 102.

Pursuant to the "automobile exception," police officers may justify a warrantless search only when probable cause is established of the presence of contraband in a readily mobile vehicle. *United States v. Brookins*, 345 F.3d 231, 235 (4th Cir. 2003).

Any evidence used in either analysis must have been obtained in accordance with the Fourth Amendment. *See Segura v. United States,* 468 U.S. 796, 804 (1984). Evidence obtained as a result of a

direct violation will be subject to exclusion from criminal proceedings. *Id.* In fact, both primary evidence obtained from an unlawful search and evidence derivative from illegality – a concept known as "fruit of the poisonous tree" – will be excluded. *Id.*

The doctrine of the fruit of the poisonous tree does, however, require a causal relationship between a particular Fourth Amendment violation and the discovery of the evidence sought to be excluded. *United States v. Clark*, 891 F.2d 501, 505 (4th Cir. 1989). In determining whether evidence was obtained from either the exploitation of illegality or through means "sufficiently distinguished to be purged of the primary taint," *United States v. Gaines*, 668 F.3d 170, 173 (4th Cir. 2012), this Court considers, among other things, the amount of time between the violation and the discovery and the presence of intervening circumstances. *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975).

The presence of an intervening circumstance seems to be an important factor, and this Court has provided that a distinct, new crime, even one triggered by a Fourth Amendment violation, may qualify as such. *United States v. Sprinkle*, 106 F.3d 613, 619 (4th Cir. 1997). In *Sprinkle*, the defendant, when subjected to an illegal pat down, ran off, pulled out a handgun, and fired a shot back at the police officer. *Id.* This was viewed as a sufficient intervening factor. *Id.*

Here, both the machete and the discovery that Mr. Lane's license was revoked were pieces of evidence obtained because of Corporal Hansen's Fourth Amendment violation. As discussed previously, the unlawful seizure occurred, at the latest, when Corporal Hansen walked away with Mr. Lane's license, and both the discovery of the machete and the revoked nature of the license were made after that.

There existed a causal relationship between Mr. Lane's seizure and the discovery of the evidence. Officer Boyd only discovered the machete because he was standing directly in front of Mr. Lane, in accordance with Corporal Hansen's directive to watch him. Corporal Hansen only discovered the license was revoked because she took it upon herself to walk away with Mr. Lane's license without reasonable

suspicion of any wrongdoing. Both discoveries would not have happened if Corporal Hansen had not seized Mr. Lane.

Further, the *Brown* factors suggest that the evidence was obtained through the exploitation of an illegal search. Both the machete and revoked license were discovered within minutes of the seizure, rendering the time between the seizure and the discovery negligible. And unlike *Sprinkle*, there existed no intervening circumstances from which police officers could make a lawful arrest. Mr. Lane, unlike the defendant in *Sprinkle*, commenced with no new crime. His possession of a revoked license and machete pre-existed the seizure, and regardless, there is a fundamental difference between simple possession and the act of violence that occurred in *Sprinkle*. Nothing here can reasonably be construed to suggest these pieces of evidence were obtained through some manner that was in any way distinguished from the illegal seizure.

And while the evidence seized is inadmissible pursuant to the exclusionary rule, the plain view doctrine would not have allowed the search of the vehicle anyway. Officer Boyd seized the machete pursuant to a statute forbidding the concealment of weapons in a way not discernible by ordinary operation, but he saw the machete simply by standing in front of Mr. Lane. The machete was clearly easily visible. Officer Boyd himself expressed a similar line of thinking when he discussed with his colleagues whether the machete was sufficiently concealed. As to the driver's license, even if it's revoked nature were admissible, that would provide no evidence of illegal contraband in the vehicle, thus rendering the automobile exception inapplicable.

Conclusion

For the aforementioned reasons, the Appellant respectfully asks this Court to reverse the denial of the motion to suppress evidence and remand this case to the District Court for further proceedings.